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Supreme Court of the United States

OCTOBER TERM, 1930

No. ~~1000~~ 118

FOX FILM CORPORATION,
Appellant,

v.

R. C. NORMAN,
STATE TAX COMMISSIONER,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF GEORGIA

STATEMENT AS TO JURISDICTION ON APPEAL

W. A. SUTHERLAND,
ELBERT P. TUTTLE,
JOSEPH B. BRENNAN,
Counsel for Appellant.

Supreme Court of the United States

OCTOBER TERM, 1930

No. 1

FOX FILM CORPORATION,
Appellant,

v.

R. C. NORMAN,
STATE TAX COMMISSIONER,
Appellee.

STATEMENT AS TO JURISDICTION ON APPEAL

Pursuant to Supreme Court Rule 12, par. 1, Fox Film Corporation, the above appellant, files this its statement showing the basis on which said appellant contends that the Supreme Court has appellate jurisdiction to review on appeal the judgment appealed from herein, as follows:

A

The statute believed to sustain appellate jurisdiction is Sec. 237(a) of the Judicial Code as amended (Sec. 344 of Title 28 of the United States Code),

which provides that "a final judgment or decree in any suit in the highest Court of a State in which a decision in the suit could be had, * * * * where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, Treaties, or Laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error." See also Act of Congress of January 31, 1928, c. 14, Sec. 1, 45 Stat. 54, as amended April 26, 1928, c. 440, 45 Stat. 466 [Secs. 861(a) and 861(b) of Title 28 of the United States Code].

B

The judgment appealed from was entered on the 27th day of February, 1931, as appears from page 18 of the certified transcript of record herein.

The application for an appeal was presented on the 4th day of May, 1931, as appears from page 23 of the certified transcript of record herein.

C

The appeal herein is from a judgment of the Supreme Court of Georgia affirming a judgment of the Superior Court of Fulton County wherein a general demurrer to a bill of complaint was sustained and the bill was dismissed. In said bill of complaint an injunction was sought by appellant herein against the collection by the defendant of a tax under the Georgia Gross Receipts Tax Act (Georgia Laws 1929 p. 103), which tax was based upon the inclusion of royalties from United States copyrights in appel-

lant's taxable gross receipts, as appears from pages 5, 13, 15, and 18 of the certified transcript of record herein. In said bill of complaint it was alleged that "said Georgia Gross Receipts Tax Law, as construed and applied to provide for the taxation of royalties from United States copyrights is unconstitutional, being in violation of Article I, Sec. 8 of the Constitution of the United States, and being in effect a tax by one of the several States upon an instrumentality of the United States or the gross income derived therefrom." In the Supreme Court of Georgia there was drawn in question the validity of said Georgia Gross Receipts Tax Act, being a statute of the State of Georgia, on the ground of its being repugnant to the Constitution and Laws of the United States, and the decision of the Supreme Court of Georgia was in favor of its validity, as appears more clearly from the certificate of the Chief Justice of the Supreme Court of Georgia at page 19 of the certified transcript of record herein.†

D

The cases believed to sustain the jurisdiction are as follows:

NATURE OF THE QUESTION INVOLVED

Macallen Company v. Massachusetts, 279 U. S. 620;

Long v. Rockwood, 277 U. S. 142;

Northwestern Mutual Life Insurance Company v. Wisconsin, 275 U. S. 136.

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† The Justices of the Supreme Court of Georgia were equally divided and the Court rendered no opinion setting forth the grounds or reasons for its decision.

CERTIFICATE OF STATE CHIEF JUSTICE

Gulf & Ship Island R. Co. v. Hewes, 183 U. S. 66;
Cincinnati P. B. S. & P. Packet Co. v. Bay, 200 U. S. 179;
Hartman v. Greenhow, 102 U. S. 672;
Whitney v. California, 274 U. S. 357;
Johnson v. Risk, 137 U. S. 300.

DECISION BY DIVIDED COURT

Hartman v. Greenhow, supra;
Lessieur et al. v. Price, 12 How. 59.

Dated May 19, 1931.

Respectfully submitted,

W. A. SUTHERLAND,
ELBERT P. TUTTLE,
JOSEPH B. BRENNAN,

Atlanta, Georgia.

Counsel for Appellant.

Service of a copy of the above statement is hereby admitted.

This day of May, 1931.

Counsel for Appellee.